

MEETING SUMMARY

NACEPT Superfund Subcommittee ***June 17-19, 2002***

Holiday Inn and Suites
625 First Street
Alexandria, Virginia



Prepared by Meridian Institute
July 23, 2002

NACEPT Superfund Subcommittee Meeting June 17-19, 2002

The NACEPT Superfund Subcommittee held its first meeting June 17 through 19, 2002 in Arlington, Virginia. This document summarizes discussion topics and key decisions made during the meeting. A full transcript of the meeting will be made available through the Environmental Protection Agency's (EPA) Docket #SFUND-2002-0005.

EPA, Meridian Institute and Dr. Raymond Loehr, the Subcommittee's Chair, provided an orientation to the Subcommittee Members on June 17, 2002. The meeting did not cover any substantive topics associated with Superfund and was purely administrative. The Meetings on the 18th and 19th were open to the public. Both days afforded the public opportunities to offer comments to the Subcommittee at designated times.

Monday, June 17, 2002, 1:30 p.m. – 5:30 p.m.

Pre-Meeting Member Orientation and Administrative Meeting

Dr. Raymond Loehr, Chairman of the Subcommittee, opened the meeting and presented welcoming remarks. He introduced Lois Gartner, the Designated Federal Officer (DFO) for the Subcommittee and John Ehrmann, the lead facilitator of the group, from Meridian Institute. The first day focused on orienting the members to their responsibilities as members of a Subcommittee to the National Advisory Committee on Environmental Policy and Technology (NACEPT) and the requirements of the Federal Advisory Committee Act (FACA).

Tim Sherer of the Office of Cooperative Environmental Management (OCEM) discussed the Superfund Subcommittee's role relative to the overarching NACEPT Committee, reviewed the requirements for membership diversity on a NACEPT Subcommittee and explained how recommendations from the Superfund Subcommittee would be submitted to and approved by the NACEPT Committee. Wilma Subra is the designated representative from the NACEPT Committee on the Superfund Subcommittee. She will serve as a full member of the Subcommittee while also providing a key link between the NACEPT Committee and the Subcommittee.

Introduction of Subcommittee Members

Dr. Loehr offered a few comments about himself and his role as the Subcommittee Chairman. Lois explained that the choice of the Chairman was the prerogative of the Administrator. Dr. Loehr asked each Subcommittee member to introduce him or herself, and provide fellow committee members with a brief summary of his or her background and relevant Superfund expertise.

FACA Orientation

Marilyn Kuray from EPA's Office of General Council (OGC) provided a brief orientation to the history of FACA and associated ethics issues. Marilyn discussed that advisory committees provide only advice and recommendations to governmental agencies. As purely advisory bodies, they are not involved in implementing or overseeing the implementation of any of the recommendations they make to a governmental agency. She also explained the FACA requirement that advisory committees must be "fairly balanced in terms of the points of view represented and the functions to be performed." Marilyn emphasized that balance, in the FACA context, does not require equal numbers of representatives from different sectors, but does mean that committees must reflect a spectrum of points of view and necessary expertise. With respect to ethical considerations, Marilyn suggested that any members currently in receipt of a grant from EPA should talk to Lois to make sure there is no perceived or real conflict of interest. Lois introduced the FACA binder which serves as a key FACA and NACEPT resource including background information, regulatory requirements and relevant EPA policies.

Introduction to the Collaborative Process

John Ehrmann reviewed the Operating Principles distributed to the Subcommittee members. Topics included:

- Representation
- Decision Making
- Communications with the Press
- Facilitation
- Meeting Materials and Summaries
- Timeline and Schedule

This document summarized the key factors of the decision-making framework for the Subcommittee, provided a definition of 'consensus' and explained how consensus works.

The schedule for future meetings was proposed. Subcommittee members were asked to check their schedules and notify the staff of any major conflicts. Revisions were made to the Operating Principles document at the request of the members. A revised version of the document was handed out the following day and is attached to this summary (Attachment A).

Group Discussion

The group discussed the process for developing and implementing the work of the Subcommittee. Key discussion points included the following topics:

- It is not likely that EPA will add people to the Committee. However, EPA and the facilitators will work with the Subcommittee to ensure the integration of any

relevant perspectives that Members believe are needed to enhance the knowledge of the Subcommittee so it can accomplish its objectives.

- While there are not any other FACA committees focused solely on Superfund, there are committees whose working groups are addressing issues related to Superfund. For example, the Finance Advisory Board has a Superfund Subcommittee and the Science Advisory Board sometimes has a subcommittee dealing with Superfund.
- EPA used the NACEPT Subcommittee membership criteria to select the Members of this Subcommittee. They also considered expertise and balance in the perspectives that they expected would be relevant to the Subcommittee deliberations. There were about 150 nominations from which EPA had to choose.
- The Subcommittee and Workgroups have the option to invite technical experts on specific issues relevant to their deliberations.
- The participation of the public is limited to specifically designated time periods on the agenda. All public sessions will include a block of time for public comment. Public involvement is limited to offering comments at designated times and does not include interjecting comments or questions during other portions of the meeting. The working groups can integrate outside perspectives as they see fit.
- EPA has made it a priority to provide the resources (including the technical and regulatory expertise) that the Subcommittee needs to accomplish its goals and answer questions. The EPA representatives will be available to clarify any policy questions that arise.

Tuesday, June 18, 2002

The Public meeting of the Subcommittee began on the morning of June 18, 2002. The meeting was an open session and audio recorded. A written transcript will be prepared and available through the EPA Docket # SFUND-2002-0005. Interested individuals and members of the press were present as observers. The Subcommittee heard comments from the public during the designated times on the agenda.

The objectives of the June 18 and 19, 2002 meeting were:

- 1) Introduction of Subcommittee Members;
- 2) Review of EPA's Charge to the Subcommittee;
- 3) Discussion and agreement on Subcommittee operating procedures;
- 4) Discussion of Subcommittee members' expectations;
- 5) Review of Subcommittee structure and work planning; and
- 6) Public comment.

Dr. Raymond Loehr, Chairman of the Subcommittee, opened the meeting and presented welcoming remarks. He introduced Lois Gartner, the Designated Federal Officer for the Subcommittee and John Ehrmann, the lead facilitator for the Subcommittee, from Meridian Institute. Dr. Loehr referred to the Meeting Purpose document (available as a

handout and attached to this document as Attachment B) while introducing the group and the goals for the meeting.

Dr. Loehr introduced Marianne Horinko, Assistant Administrator, Office of Solid Waste & Emergency Response (OSWER). Ms. Horinko welcomed and thanked the members of the Subcommittee for agreeing to serve and summarized EPA's expectations and vision for the panel. Key points made during Ms. Horinko's presentation and the discussion with the Subcommittee that followed included:

- If there are additional voices/perspectives that the Subcommittee wants considered during its deliberations, then the panel should identify individuals or organizations with those perspectives to make presentations. These individuals will serve as consultants or experts.
- The Subcommittee should not hesitate to bring key issues to EPA, through the full NACEPT Committee, to help strengthen the Superfund Program in the interim - before the Subcommittee finalizes its recommendations.
- It is not the Agency's intent to weaken Superfund. In the cases where alternatives to the NPL are implemented, EPA is putting into place guidance to ensure that voluntary cleanups meet the stringent standards of the NCP. EPA wants to take advantage of these efforts to maximize the opportunities available through a suite of cleanup programs.

After their discussion with Ms. Horinko, the Subcommittee Members introduced themselves and John Ehrmann reviewed the Agenda. The group agreed to a proposed modification of the Agenda by moving up the discussion of the Operating Procedures, thereby leaving the remainder of the morning to discuss the draft Charge.

Group Operating Procedures Discussion

John Ehrmann led the group in a discussion of ground rules for the Subcommittee's deliberations. Comments from the Subcommittee are summarized below according to each topic area within the Operating Principles (see Attachment A).

Representation

- Some members raised concerns about their perceptions that lack of expertise or limited representation of certain perspectives in the Subcommittee's membership might impede the panel's work. Supplementary expertise and perspectives can be made available to the full Subcommittee and any working groups through the use of consultants or experts. Such consultants/experts can be used to provide representation of a constituency represented by a Member unable to attend a given meeting or they can be used to provide expertise perceived to not be present on the standing Subcommittee. These consultants would not be "voting" members. They would, however, be able to provide perspectives/expertise when asked to do so by the Subcommittee or a workgroup and their ideas and concerns could be integrated into a work product.

- Concerns were raised about potentially making the workgroups unwieldy if Members bring in experts and consultants to participate. Each working group needs to decide collectively how it will balance its discussion, whether through the addition of outside perspectives or some other acceptable means.
- The Subcommittee Members expressed no disagreement over the “representation” language in the Operating Principles.

Decision Making

- The testimony of outside perspectives needs to be documented and incorporated into the deliberations of the group. The Subcommittee will be taking public comment and will be integrating the ideas from public testimony into its decision-making as an important part of the process.
- One of the responsibilities of Meridian and the Agency will be to make sure that the perspectives of the Subcommittee and key constituents are reflected in their decisions. If one of the members is absent on a day when a key decision is being made then Meridian will make sure those perspectives are sought. Everyone shares responsibility for making sure progress is made without compromising the integrity of the process by omitting key perspectives.
- If there were a deadlock then it would be the discretion of the chair to decide how to move forward. Meridian and the Agency do not mention voting in the decision making structure because this group was not organized to function as a representative democracy. There are a number of tools that can be used to encourage the breaking of an impasse. But the Subcommittee can opt to document alternative views and move on.
- If members of the public would like to comment but cannot attend the meetings then they can submit written comments. In addition, Lois Gartner (the DFO) will work with individuals who would like to offer comments but are unable to physically attend a meeting.

Communication With the Press

- When contacted by the press about workgroup or Subcommittee deliberations, Subcommittee Members are encouraged to limit communication of the details of the work group or Subcommittee deliberations. The Subcommittee and Staff will explain the groups and the topics they are addressing to the Public and Press, but at any given time in the process, the thinking of the work groups as a whole may not necessarily reflect a workgroup or the Subcommittee’s final recommendations.
- There are judgment calls that members will have to make. Discussing personal opinions about an issue is appropriate, but to discuss your view regarding someone else’s idea that was suggested in a workgroup meeting would be inappropriate.

Role of the Facilitator

The Members had no comments on this section.

Meeting Materials and Summaries

- The meetings will be recorded and the transcript will be made available for the public. A shorter summary will also be produced to highlight key topics of discussion and decisions.
- There will be a facilitator for work groups. FACA prohibits work groups from making decisions for the Subcommittee. A transcript will not be prepared for the work group meetings. Commonly, a working draft of a document(s) becomes the rolling record of the work groups' process, but it is up to the Members to determine the most effective means of communicating with the full group. Work groups will be asked to submit documents in advance so the full Subcommittee has plenty of time to review and consider them prior to the meetings.
- It is not preordained that there will be three work groups that mirror the three main topics in the Agency's charge to the Subcommittee (i.e., role of the NPL, mega sites and program performance measures). It may be possible to organize the Subcommittee's task differently or in an iterative process. The Subcommittee agreed to develop options over the next day or so.
- The deliberations of the work groups will be both in-person and via facilitated conference calls. Site visits are an option that will be explored.
- Regarding the time frame of "approximately 12 months", the members are appointed for an 18-month period of time. The Operating Principles document will be revised to reflect that.

Charge Discussion

The Charge for the committee was introduced as drafted by the EPA. Meridian staff facilitated a group discussion about the Charge and documented additional ideas from the Subcommittee members about topics that were missing or needed clarification. Meridian staff agreed to integrate the ideas and interests expressed by the Subcommittee Members into the Charge overnight and provide a revised draft for the Subcommittee to review and discuss the following day. A copy of the revised document is attached (Attachment C).

Remarks from Linda Fisher

Linda Fischer, Deputy Administrator, offered her thoughts on the Subcommittee's purpose and what she hopes to see come from its deliberations. She also provided some clarification on key topics and questions raised by the group.

For the purpose of this group's deliberations, continuation of a current level of funding for Superfund should be assumed. EPA is employing this assumption for planning purposes.

Don't assume that EPA is going to seek legislative changes. If legislative options for a given issue seems to become important through Subcommittee deliberations, then the Subcommittee should make note. However, EPA's focus is on what can be done within the current context of the law and the Agency is not looking at changing underlying statutory frameworks. EPA is interested in having all waste cleanup programs work

together more seamlessly. Recommendations offered in this vein should be made in the context of the existing statutes. If that assumption interferes with Subcommittee deliberations – i.e. improving the consistency across waste cleanup programs cannot be considered without contemplating legislative changes, then that impediment should also be noted. In short, the Agency needs to manage some very difficult public policy issues now, and it is on those issues that EPA seeks Subcommittee advice.

A Member questioned what specific challenges EPA sees relative to mega sites. The Deputy Administrator explained that a detailed presentation would be provided to the group on the topic, but some of the factors include:

- The drain on resources – the high dollar needs over a long period of time and the resulting trade-offs in terms of what cannot be done if resources go to fund mega sites.
- Engineering/remedial action complexity.
- Time required for clean-up (20-30 years is an unacceptable answer in the opinions of most communities.)
- Risk management complexity - the first 80% of the risk may be reduced through a fraction of the cleanup but the site is still not complete.
- Getting to “complete” is unclear.

A Subcommittee Member raised another question regarding how EPA will track the implementation of the Subcommittee’s recommendations. The Deputy Administrator said that a formalized feedback loop has not been typical for the NACEPT Subcommittees but she would be open to formalizing such a mechanism to report back on how recommendations have or have not been used.

Regarding federal facilities, EPA decided not to specifically include a focus on federal facilities because that would be such a significant task. However, EPA realizes their relevance and importance to the work of the Subcommittee.

EPA has formed internal committees around NPL and mega sites to funnel information into this NACEPT Subcommittee. These EPA committees are internal workgroups that include various perspectives and expertise in the agency.

EPA Presentations

EPA Staff briefed the Subcommittee on Superfund and program topics germane to the Subcommittee Charge. The presenters’ slides are attached (Attachment D). Presentations were made by EPA staff as follows:

General Overview of Superfund: Larry Reed, Deputy Director, Office of Emergency Remedial Response (OERR); Barry Breen, Director, Office of Site Remediation Enforcement (OSRE), Office of Enforcement and Compliance Assurance (OECA); and Susan Bromm, Deputy Director, OSRE/OECA

NPL Listing: Steve Caldwell, Deputy Director of the State and Site Identification Center (OERR); Yolanda Singer, State and Site Identification Center; Jen Griesert, State and Site Identification Center.

Public Comment Period

Two Members of the public were invited to offer comments on their perspectives and concerns regarding Superfund and Subcommittee. Their testimony will be included in the transcript. The June 18th portion of the meeting adjourned at 5:00 p.m., immediately following the public comment period

Wednesday, June 19, 2002

R. Loehr called Wednesday's meeting to order at 8:30 a.m. and reviewed the agenda for the day. The meeting began with EPA presentations as follows:

Mega Sites: Bruce Means, Senior Process Manager, OERR.

Performance Measures: Melanie Hoff, Program Analysis and Resource Management, OERR, and David Cooper, Region 3/8 Center, OERR.

The presenters' slides are attached (Attachment D).

Subcommittee Structure and Work Planning Discussion

A revised version of the Operating Principles was circulated to the Members. Minor changes were suggested. The document was revised based on the Subcommittee's input and is included as Attachment A.

John Ehrmann facilitated a discussion about how the Subcommittee would organize itself to accomplish its work. A revised version of the draft Charge - in which Members' comments from the previous day's discussion were integrated into the questions defining each subsection of the Charge - was presented. The group asked that the relevant comments and questions from the discussion of mega sites and performance measures be integrated into the Charge. John Ehrmann suggested that the group consider using the Charge as the foundation for developing a dynamic work plan for the Subcommittee. The original Charge as drafted by EPA could stand to document the original position of EPA. The changes, clarifications and additions from the Subcommittee's discussion would provide a first step toward evolving the document into a more specific description of their scope, a statement of the problem and the questions they would attempt to answer. After further discussion, the group agreed that they did not feel comfortable with the (proposed) work groups (i.e. the role of the NPL, mega sites and measuring program progress) as the structure for their work in the near term. They agreed to engage in a fact-finding phase in order to better educate themselves about the "problems" and the appropriate focus of their effort. The first task will be to refine the questions further and connect them to information and data needs so the group does not waste time collecting "just interesting" information.

Schedule

The final schedule for the next four full Subcommittee meetings agreed to by the members of the Subcommittee present were:

September 23-24, 2002

January 7-8, 2003

March 11-12, 2003

June 18-19, 2003

Public Comment Period

Two members of the public were invited to offer comments on their perspectives and concerns regarding Superfund and the Subcommittee. Their testimony will be included in the transcript.

Next Steps

After lunch, John Ehrmann proposed a reorganization based on the conversation of the Group. He suggested developing ad-hoc groups that would meet between now and September according to the following topics:

- Information collection and assessment
- Work Plan (charge) refinement
- Measuring Program Progress

The goal established was to refine the policy questions around the Subcommittee's Charge. In parallel, the Subcommittee will develop a list of information needs and collect relevant information already available by the September meeting. The group agreed that every effort should be made to distribute meeting materials to Subcommittee members at least 7 days prior to Subcommittee meetings. A detailed summary of next steps was circulated to the members following the meeting and is attached (Attachment E).

The Agency efforts to Measure Program Progress have a near-term need for input from the Subcommittee. The Subcommittee will miss the opportunity to influence that internal effort if the topic is tabled for the time being. Therefore a work group will be developed to initiate work with the internal agency team.

The ideas from the Members' discussions regarding how they should divide into workgroups will be integrated into the Charge discussion and the development of a first draft of a work plan for the Subcommittee.

The Subcommittee Members agreed to the proposed re-organization.

Meridian staff agreed to prepare a summary of the next steps that resulted from the discussion about group organization and circulate it as soon as possible to all Subcommittee Members (prior to the meeting summary). They also agreed to take the next cut at revising a work plan based on the initial Charge, but integrating the Subcommittee's comments with dates and deadlines. Meridian and EPA staff assignments and communication for each group would also be clarified.

The group agreed that the focus of the next meeting Agenda would be an update and response to progress on the three efforts. Members of the Subcommittee were asked to volunteer for participation in each of the work areas.

The meeting was adjourned at 3:00 p.m. on the afternoon of the June 19th.

A complete list of Meeting Participants and Observers will be circulated to the Subcommittee Members and available along with the transcript.

ATTACHMENTS

- A. Operating Principles
- B. Meeting Purpose Statement
- C. Revision of the Subcommittee's Charge
- D. EPA Presentations
 - Superfund Overview
 - Enforcement Presentation
 - Overview of NPL
 - NPL Background
 - The Mega Sites Issue
- E. Summary of Next Steps

Attachment A - Operating Principles

NACEPT Superfund Subcommittee Operating Principles

REVISED 6-18-02

Representation

Direct participation of all Members is an essential element of the success of the Subcommittee. Members are expected to attend all Subcommittee meetings. Any member not able to attend a meeting may send a representative who may be asked for their opinion and expertise, however they will neither sit at the table nor take part in ongoing Subcommittee deliberations or decision-making.

Decision Making

The committee will operate using a collaborative problem-solving approach. This approach calls for the committee to:

- 1) Gain a thorough understanding of the issues, interests and ideas of the Members.
- 2) Based on that understanding, develop goals and objectives designed to satisfy the respective interests of the Members.
- 3) Develop recommendations based on the consensus opinions of the Subcommittee.
- 4) Consensus means that everyone can “live with” the outcome, though aspects of it may not be their first choice.
- 5) In the absence of consensus, the divergent opinions of the Members will be documented.

Collaborative problem solving depends on mutual respect and careful listening among members. Meetings will be structured to support a respectful atmosphere and the development of trust and understanding among Members.

In accordance with the Federal Advisory Committee Act, opportunity will be provided for public comment at each public meeting of the Subcommittee. The Subcommittee will carefully consider input from the public in its deliberations and will include a summary of public comments in the public record of the Subcommittee’s work.

In the case where outside experts need to be consulted, an explicit effort will be made to bring accurate and trusted information, data and professional expertise into the process.

Communications with the Press

In accordance with FACA, all formal meetings of the Subcommittee will be open to the public and press. When Subcommittee Members are contacted by the press, they are expected to represent only their personal perspectives and not to characterize the views of other Members or the Subcommittee deliberations. In some cases, the Subcommittee may designate the chair or other representative to handle press contacts.

Facilitation

A neutral, third-party facilitator(s) will assist the Subcommittee by guiding the discussions in a balanced and fair manner that keeps the Subcommittee focused, respectful, and within time limits agreed to in agendas.

Meeting Materials and Summaries

Every effort will be made to distribute meeting materials to Subcommittee members at least 7 days prior to Subcommittee meetings. Meeting summaries will be developed for each Subcommittee meeting. Summaries will be accurate and substantive accounts of the meeting, but will not be literal transcripts. Summaries will be submitted to the Subcommittee Members for their review and comment prior to making them available to the public.

Timeline and Schedule

We anticipate that the Subcommittee will meet for approximately 18 months, with Subcommittee meetings quarterly and workgroups meeting more frequently in between.

Attachment B - Meeting Purpose Statement

NACEPT Superfund Subcommittee June 12, 2002 Meeting Purpose

Objectives of June 18th and 19th meeting:

1. Introduction of Subcommittee members;
2. Review of Subcommittee charge;
3. Discussion and agreement on Subcommittee operating procedures;
4. Discussion of Subcommittee member expectations;
5. Review of Subcommittee structure and work planning; and
6. Public comment.

This committee is chartered as a Subcommittee of the Environmental Protection Agency's (EPA) National Advisory Council for Environmental Policy and Technology (NACEPT). This meeting is being held to gather information and facilitate discussion to help the Subcommittee in its task of assisting the agency in identifying the future direction of the Superfund program in the context of other federal and state waste and site cleanup programs. To this end, the Subcommittee will review the relevant resources and, to the extent possible, provide answers to the questions set forth in its Charge.

Subcommittee Members are being asked to examine the information and material obtained during this, and other public meetings, in an effort to inform its work. Interactive discussion and questioning for the purpose of probing an issue and clarifying a point will be encouraged. As such, the comments made by Subcommittee Members should neither be interpreted to reflect their current position on the subject under discussion nor their future position as it may evolve over the course of deliberation. Additionally, the comments of individual Subcommittee Members should not be interpreted as positions of the Subcommittee or the EPA.

The Subcommittee will deliberate thoroughly before developing consensus findings, conclusions or recommendations. Any report on of the opinion of the group will undergo rigorous review by all Subcommittee Members before it is considered final and transmitted to EPA.

This is an open session for public record. Interested individuals and members of the press have been invited to attend as observers. We will be entertaining questions from the floor during the designated times on the agenda. Lois Gartner, the Designated Federal Officer, will be available to assist reporters and other interested individuals who would like additional information. Her contact information is available on the Roster at the registration table.

Attachment C - Revision of the Subcommittee's Charge

Superfund Subcommittee National Advisory Council for Environmental Policy and Technology Charge

REVISED 6-19-02 Following Subcommittee Discussion on 6-18-02

BACKGROUND:

In July 2001, the Deputy Administrator directed the development of an action plan to address the recommendations in the Resources for the Future (RFF) report to Congress, *Superfund's Future, What Will It Cost?* Specifically, the plan called for the creation of a Superfund Subcommittee under the auspices of the Agency's National Advisory Council for Environmental Policy and Technology (NACEPT).

In the fall of 2001, the Agency enlarged the Superfund Subcommittee's scope to reflect consideration of the Superfund program in context with other federal and state waste cleanup programs. This broader focus will consider how the Nation's waste programs can work together in a more effective and unified fashion, so that citizens can be assured that federal, state, tribal and local governments are working optimally to make sites safe for their intended uses.

STATEMENT OF TASK:

The overall intent of this effort is to assist in identifying the future direction of the Superfund program in the context of other federal and state waste and site cleanup programs. Specifically, the Superfund Subcommittee will review the relevant documentation and, to the extent possible, provide answers to the questions that are attached and that relate to: a) the role of the NPL, b) mega sites, and c) measuring program performance.

During the period of Subcommittee activity, additional issues may arise for which the Agency will seek Subcommittee input. If this occurs, EPA will identify specific issues or questions for which advice is sought and provide appropriate documentation.

LEVEL OF EFFORT:

1. The Agency shall furnish the necessary personnel, material, reports, background documents and facilities needed for the Subcommittee activities.

2. It is expected that the Subcommittee activities will be accomplished by a series of meetings over about an 18 month period.
3. It is anticipated that one or a series of consensus reports will result. However, where consensus cannot be reached, a written discussion of the different opinions of Subcommittee members is to be provided.
4. The scope of the Subcommittee, as identified in the Statement of Task, will not change without agreement of both the Subcommittee and the Agency.
5. For additional issues for which the Agency will seek Subcommittee input, it is understood that these issues would not replace the main focus of the Subcommittee as identified in the Statement of Task. For these additional issues, the Subcommittee response may be in the form of a “consultation,” i.e., dialogue, rather than a formal written report.
6. The Subcommittee may, at its discretion, make use of separate working groups to address specific issues. The Agency will support the activities of these working groups in the same manner as will be provided for the Subcommittee itself.
7. The Subcommittee will operate as and be subject to the requirements of a FACA Committee.

ROLE OF THE NPL

The process to place sites on the NPL has become increasingly contentious since the Superfund program’s inception. Some stakeholders support the notion that the NPL is most appropriately a “tool of last resort.” Others believe the current process inappropriately emphasizes keeping sites off the list. Perceptions aside, sites placed on the NPL are typically those with either recalcitrant or no potentially responsible parties (PRPs), those where States lack funds to perform cleanup, those considered Federal facilities, or where tribal, trustee, or affected community pressure is applied. Other cleanup avenues include the Resource Conservation and Recovery Act (RCRA) program, the relatively new Brownfields program, Federal agency response programs, Leaking Underground Storage Tank Program, State deferral or voluntary cleanup programs, and EPA’s use of so-called “NPL-equivalent” cleanups and large-scale removals.

Among the issues that will be addressed are the following:

1. What should the role of the NPL be in addressing waste cleanup and what does it mean to be placed on the NPL?
 - a. What should be the relationship between the NPL and other cleanup programs?
 - b. How to best ensure an adequate level of cleanup?
 - c. How to integrate the NPL with other programs/statutes (NRD, CWA, Brownfields, etc.)?

- d. Should the NPL be a “tool of last resort?” In particular, what is the appropriate role of non-NPL cleanups and States in addressing sites?
 - e. What are the impacts/implications of placement on the NPL (funding, community, etc.)?
 - f. How can EJ concerns be more effectively integrated into the implementation of the NPL (e.g. synergistic and cumulative impacts)?
 - g. What is the appropriate use of the NPL in the context of mega sites (e.g. river basins)?
 - h. What are the issues associated with the goals of remediation and economic redevelopment?
2. Who should be involved in determining what sites are listed (e.g., states, tribes, and communities)?
 - a. What should the nature of their involvement be?
 - b. Should their role differ depending on the site type or risk?
 - c. What is the role of local authorities?
 - d. What is the role of communities (in listing, risk assessment methodology, etc.)?
 - e. How can the role of ATSDR (or equivalent) be integrated at non-NPL sites?
 3. What kinds of sites belong on the NPL?
 - a. Should the NPL be used for a more limited range of sites?
 - b. How can Tribal sites be addressed more effectively through the NPL? (How can cultural and subsistence-living factors be integrated more effectively?)
 - c. What is the role of Risk (ecological, human health) in determining which sites should be on the NPL?
 - d. What are the technical criteria for listing a site?
 - e. What should the interaction be between the removal and the remedial programs?
 - f. What are the broader issues of NPL listing (stigma, etc.)?

Information Needs

1. Assess the relative costs of using other cleanup programs as alternatives to the NPL.
2. Determine whether EPA has used the citizen petition process to add sites to the NPL. If so, how?
3. Identify the other remedial/cleanup alternatives and their obligations/requirements (RCRA ToSCA, state standards, etc.).
4. Identify other funding sources (non-EPA public sources, private funding).
5. Assess the issues behind “recalcitrant parties”.
6. Understand EPA guidance on the listing process.
7. Assess the characteristics of other cleanup programs that have made them more or less successful than the NPL. What kind of sites were involved (cost complexity etc.)?

8. Gain a better understanding of the HRS and the application of the “magic number.”
9. Assess community acceptance of NPL listing vs. voluntary cleanups.
10. Determine what types of sites are typically listed on the NPL. (Is it true that “sites placed on the NPL are typically those with either recalcitrant or no potentially responsible parties (PRPs), those where States lack funds to perform cleanup, those considered Federal facilities, or where tribal, trustee, or affected community pressure is applied?)
11. Assess the use of 106 Orders (and funding to implement).

MEGA SITES

The RFF Superfund cost study defined mega sites to be those NPL sites where cleanup costs (i.e., total removal and remedial action costs) exceed \$50 million. Mining and contaminated sediment sites are often considered synonymous with mega sites, although the majority of mining and sediment sites are not mega sites, and vice versa. RFF indicated that cleanup costs for mega sites are among the major variables driving future program costs. Mega site cleanups, especially those tied to mining and contaminated sediments, are also often difficult and time consuming.

Among the issues that will be addressed are the following:

1. Should costs be the determining factor when designating sites as mega sites or should other factors such as complexity or geographic size be considered?
2. What are the reasonable policy options for addressing mega sites?
 - a. Are there viable alternatives to placing mega sites on the NPL and/or ways of containing their costs (for example, listing only the highest priority portions of the sites)?
3. What are the unique aspects of mega sites that might require a different decision making process for NPL listing?
 - a. Large geographical distribution (e.g. river basins)
 - b. Slow rate of progress
 - c. Risk management challenges
 - d. Factors specifically relevant to Federal Facilities
4. How to integrate long-term stewardship in the cleanup/management of mega sites?

Information Needs

1. Confirm the characteristics that drive the costs of mega sites (quantity of material, etc.).
2. Confirm the list of all sites defined as “mega sites.”

3. Bring in outside experts to help frame the discussion around issues where the committee may be missing expertise.
4. Clarify the federal budgeting process and how mega sites are funded.
5. Summary of RFF study.
6. Clarify EPA's position on liability/cleanup responsibility for state/private/other ownership.
7. Determine the impact of PRPs protecting their assets.

MEASURING PROGRAM PROGRESS

For approximately the last seven years of the Superfund program, construction completion has been the program's key measure of progress for sites on the NPL. However, this milestone only reflects the final outcome of years of analysis, cleanup work, and effort at NPL sites. Construction completion neither measures nor characterizes the impacts of cleanup efforts on human health and the environment. Furthermore, construction completions do not correlate as milestones for non-NPL cleanups or with efforts at other hazardous waste cleanups. In the past few years, the Resource Conservation and Recovery Act (RCRA) program developed indicators to gauge the impact of its efforts on human health and the environment. The Superfund program has capitalized on RCRA's efforts and conceptualized similar indicators for Superfund work. Nonetheless, there still are few cross-program metrics to capture comprehensive outcomes for interim work. This void impedes the Agency's ability to communicate work at hazardous waste sites to the public, Congress, States, and the regulated community. The Agency expects to share new measure proposals with the panel and will seek feedback from the Subcommittee on those proposed measures.

Among the issues that will be addressed are the following:

1. What criteria should be used to measure progress?
 - a. Should environmental indicators be established that are consistent among environmental programs?
 - b. Review the definition of construction completion and the relationship between that and "really being done."
 - c. Determine the role of public/community values in determining progress (e.g. cultural, social, subsistence lifestyles).
 - d. How to address and respond to remedy failures?
2. Who should be involved in measuring progress and defining success?
 - a. What is the role of communities and other parties?
3. What is the long-term effectiveness of institutional controls (particularly enforcement), containment and natural attenuation?
4. How to integrate long-term stewardship into the goals of the Program?
 - a. How to assure responsibility?
 - b. How to fund for long-term stewardship?

Information Needs

1. Clarify how the money is used and what you get for it.
2. Determine how communities feel about the program. Is there consensus about what communities identify as success and progress?
3. Assess the impacts/implications of economic redevelopment vs. remediation.
4. What are the timing assumptions for construction completion (speed of cleanup)?
5. What are the institutional controls available for monitoring and long-term stewardship?
6. What environmental indicators do other cleanup programs use?
7. What factors influence whether a resource is useable (cultural factors, factors influencing subsistence lifestyles etc.)?
8. Determine the steps for communities to assess their own measures of success.
9. Determine how to measure long-term treatment scenarios for those sites that do not reach construction completion.
10. Identify Congressional perspectives on success.

Attachment D - EPA Presentations

Attachment D - EPA Presentations available electronically as separate documents.

1. Superfund Overview
2. Enforcement Presentation
3. Overview of NPL
4. NPL Background
5. The Mega Sites Issue

EPA Presentations available as hard copies (see contact information below):

1. Characterization of the NPL
2. Performance Measures/Environmental Indicators

Please contact Beth Huron at bhuron@merid.org, or 970-513-8340 ext. 204 for information on any of the EPA presentations.

Attachment E - Summary of Next Steps

NACEPT Superfund Subcommittee June, 2002 Meeting Next Steps Summary

6-25-02

The NACEPT Superfund Subcommittee agreed to follow three concurrent paths of action between its first (June 17-19, 2002) and second (September 23-24, 2002) meetings. The following are the three tracks:

- Information Collection and Assessment
- Work Plan (Charge) Refinement
- Develop a strategy for addressing “Measuring Program Performance”

Ad hoc groups established to coordinate the work of the Subcommittee prior to the September meeting will address these three tasks. At the September meeting, decisions will be made about the most appropriate way to organize the Subcommittee’s work from that point forward. Members volunteered for participation in the ad hoc groups at the June, 2002 meeting. Those Members who were not present to volunteer will be asked to sign up after reviewing this document. Meridian staff will work to ensure balanced and diverse perspectives are represented in each of the ad hoc committees. Face-to-face meetings and/or conference calls are anticipated for each track. Meridian and EPA will provide staff support and facilitation for each of the groups as necessary.

Additionally, Meridian will circulate a draft summary of the June, 2002 meeting highlights by June 28th. A transcript of the full meeting will be prepared and available to the Subcommittee Members and the Public by the end of July.

Information Collection and Assessment

Step 1: Steering Committee Members volunteer to participate in an ad hoc work group. (done – contact missing members and address balance of group.)

Step 2: Meridian staff will draft an initial list of information needs and data gaps identified during group discussion and contained in the revised charge distributed on the last day of the June, 2002 meeting. Comments and questions posed by the Subcommittee Members following the EPA presentations and/or submitted by the Subcommittee Members in writing at the meeting will be included. The focus of the fact-finding will be on the issues identified for the NPL and mega sites. Measuring program performance will be addressed through the third track activity.

Step 3: Meridian staff will circulate the initial list to the Subcommittee members by July 15th. Members will be asked to respond with the following information within 2 weeks:

- Refine the list of information needs.
- Identify additional information needs.
- Identify data and information available to address some of the needs identified to date. Include a copy of the document/data or reference and contact information to aid staff in the collection of materials.

When responding, members will be asked to relate all data requests to a policy issue identified in the scope of the most recent version of the charge (circulated to members on 6/19/02).

Step 4: Meridian Staff will collect responses, revise the document and develop a system for tracking all information available and efficiently making that information available to the Members (July 2002).

Step 5: Meridian and EPA staff will support the Subcommittee Members in their efforts to collect information to fill the data gaps and information needs. EPA representatives, States and other resources will be contacted as necessary during the information gathering phase. (July –September, 2002 and ongoing)

Step 6: Meeting(s) and/or conference call(s) will be scheduled to discuss information and data priorities and identify topics for the September meeting. (late August)

Step 7: Meridian Staff will circulate information to all Subcommittee Members in response to the information needs as it becomes available. (ongoing)

Step 8: Workgroup members will present information/data at the September Subcommittee meeting through written material and presentations as deemed appropriate.

Information Collection and Assessment Work Group Volunteers:

Subcommittee Members volunteered for participation in the ad hoc groups at the June, 2002 meeting. Those Members who were not present to volunteer are asked to sign up after reviewing this document. Meridian staff will work to ensure that balanced and diverse perspectives are represented in each of the ad hoc committees. Members who have signed up to date include:

Jane Gardner (Sediments data)
Tom Newlon (Sediments data)
Sue Briggum (other program data)
Steve Elbert (Mine cleanup data)
Mel Scaggs
Lindene Patton (Comparative regulatory program analysis - primarily legally focused)
Mark Giesfeldt (State information via ASTSWMO, alternate state approach)
Catherine Sharp (as above)

Lexi Shultz (abandoned mine land program information for some states)
Bill Adams (Mine Cleanup data)
Dick Dewling – (alternate funding)
Mike Mittelholzer – (Survey of State Cleanup Programs)

Work Plan (Charge) Refinement

The Charge for the Subcommittee was drafted by EPA to provide a guide for the group in its focus. This ad hoc work group will use the Charge and the feedback from the Subcommittee Members to draft a Work Plan, defining the policy issues that they will address in their path forward.

Step 1: Steering Committee Members volunteer to participate in an ad hoc work group. (done – contact missing members and address balance of group.)

Step 2: Meridian staff will revise the Charge based on feedback from the Members during the June, 2002 meeting and circulate a revised draft to the ad hoc group. (July 8th)

Step 3: Convene a meeting and/or conference call(s) as necessary to try to refine the policy issues that the Subcommittee will address. (July)

Step 4: Work with Meridian Staff to revise the Charge and/or develop a Work Plan that reflects this policy focus. (July – August)

Step 5: Recognize the link with the information collection group and share draft revisions as appropriate.

Step 6: Circulate a revised draft of the Work Plan to the full Subcommittee for feedback and revision prior to the September meeting. (Late August)

Step 7: Present a refined draft to the full Subcommittee 2 weeks prior to September meeting.

Work Plan (Charge) Refinement Work Group Volunteers:

Subcommittee Members volunteered for participation in the ad hoc groups at the June, 2002 meeting. Those Members who were not present to volunteer will be asked to sign up after reviewing this document. Meridian staff will work to ensure balanced and diverse perspectives are represented in each of the ad hoc committees. Members who have signed up to date include:

Grant Cope
Jim Derouin
Steve Elbert
Glenn Hammer
Ken Jock
Jane Garder

Michael Mittelholzer
Vicky Peters
Kate Probst
Ed Putnam
Catherine Sharp
Mel Scaggs
Lexi Shultz
Wilma Subra
Robin Wiener

Measuring Program Progress

Step 1: Steering Committee Members volunteer for an ad hoc committee to provide review and reaction to initial agency ideas on measuring the progress of the Superfund program. (done – contact missing members)

Step 2: Collect additional information from Internal EPA agency team to clarify their needs and the focus of the feedback they would like. Contact work plan volunteers with additional information and proposed meeting time and format. (July 15)

Step 3: Plan meetings and conference calls as necessary to support a dialogue with the internal agency team. (July – August)

Step 4: Ad hoc group develops a draft strategy that can then be circulated more broadly for comment/discussion. Meeting(s) and/or conference calls will be necessary.

Step 5: Report back to the Subcommittee with strategy for addressing this topic in September. (Circulate 2 weeks prior to September meeting)

Measuring Program Progress Work Group Volunteers:

Subcommittee Members volunteered for participation in the ad hoc groups at the June, 2002 meeting. Those Members who were not present to volunteer will be asked to sign up after reviewing this document. Meridian staff will work to ensure balanced and diverse perspectives are represented in each of the ad hoc committees. Members who have signed up to date include:

Bill Adams
Sue Briggum
Grant Cope
Steve Elbert
Mark Giesfeldt
Fred Kalisz
Ray Loehr
Jason White